Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DYSART, TAYLOR, LAY, COTTER & McMONIGLE, P.C.,

Petitioner,

v.

CHICAGO TRUCK DRIVERS, HELPERS & WAREHOUSE WORKERS UNION (INDEPENDENT) PENSION FUND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court, in protecting the legal profession's zeal for forthrightness and independence and in recognition of the importance of assuring alert self-restraint in the exercise by district courts of the summary power for punishing contempt, has long held that lawyers cannot be subject to the penalty of contempt of court for the advice they give their clients in good faith. *In re Watts*, 190 U.S. 1 (1903); *Maness v. Meyers*, 419 U.S. 449 (1975). The Eighth Circuit's decision – which holds a "law firm's bad faith *vel non* is immaterial to the court's finding of contempt" – directly conflicts with the Court's precedent and chills the legal profession's duty of zealous representation, undermines the attorney-client relationship, and threatens the individual rights and security of lawyers and their clients.

The question presented is whether a law firm can be held subject to the contempt of court sanction, in conflict with the Court's longstanding precedent, for giving legal advice to a client in the absence of any evidence or finding that the law firm gave the advice in bad faith.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the Court below:

The Petitioner is Dysart, Taylor, Lay, Cotter & McMonigle, P.C.

The Respondents are Chicago Truck Drivers, Helpers & Warehouse Workers Union (Independent) Pension Fund; Fred Boudreau, trustee of Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund; Jack Stewart and William H. Carpenter, the present trustees; and John Broderick.

STATEMENT UNDER RULE 29.6

In accordance with United States Supreme Court Rule 29.6, Petitioner states that it has no parent company, and no publicly held company has any interest in it.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Statement under Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	v
Table of Appendices	ix
Opinions Below	1
Statement of Jurisdiction	1
Statement of the Case	1
Reasons for Granting the Petition	8
I. Certiorari Is Warranted Because The Eighth Circuit's Decision Conflicts With The Court's Longstanding Precedent Holding Lawyers Are Not Subject To Contempt For Providing Good Faith Legal Advice To Their Clients.	9
II. The Eighth Circuit's Decision, Which Conflicts With The Court's Precedent, Calls For The Court's Exercise Of Its Supervisory Authority Over The Lower Federal Courts To	

Contents

Page

Assure Self-Restraint In The Exercise Of The Contempt Power And To Remedy The Far-Reaching, Negative Effects Of The Eighth Circuit's Decision Which Chills Zealous Advocacy, Undermines The Attorney-Client Relationship, And Threatens The Individual Rights And Security Of Lawyers And Their Clients. 17

Conclusion 23

TABLE OF CITED AUTHORITIES

Cases:	Page
Arnett v. Kennedy, 416 U.S. 134 (1974)	20
Arthur Andersen LLP v. United States, 544 U.S. __ (2005)	9
Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing, 974 F. Supp. 751 (E.D. Mo. 1997)	2, 3
Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing, 207 F.3d 500 (8th Cir. 2000)	3-4, 10, 15, 19
Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing, 230 F. Supp. 2d 963 (E.D. Mo. 2002)	1
Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing, 406 F.3d 955 (8th Cir. 2005)	1
Consumers Gas & Oil, Inc. v. Farmland Indus., Inc., 84 F.3d 367 (10th Cir. 1996)	16
D. Patrick, Inc. v. Ford Motor Co., 8 F.3d 455 (7th Cir. 1993)	10, 16
Donahue v. Shughart, Thomson & Kilroy, P.C., 900 S.W.2d 624 (Mo. banc 1995)	21-22

Cited Authorities

Page

Gerardi v. Pelullo, 16 F.3d 1363 (3d Cir. 1994) ... 13

H.K. Porter Co., Inc. v. National Friction Prods. Corp., 568 F.2d 24 (7th Cir. 1977) 16

Independent Fed'n of Flight Attendants v. Cooper, 134 F.3d 917 (8th Cir. 1998) 10

Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills, 141 F.3d 1284 (8th Cir. 1998) 13

Korea Shipping Corp. v. New York Shipping Ass'n, 811 F.2d 124 (2d Cir. 1987) 14

In re Landau, 243 N.Y.S. 732 (A.D. 2 1930) 12

Maness v. Meyers, 419 U.S. 449 (1975) .....*passim*

In re McConnell, 370 U.S. 230 (1962) .....*passim*

Oakley v. Cokalete, 44 N.Y.S. 1070 (A.D. 2 1897) ... 12

Offutt v. United States, 348 U.S. 11 (1954) 8, 10

Seattle-First Nat'l Bank v. Manges, 900 F.2d 795 (5th Cir. 1990) 16

Sidway v. Sidway, 141 N.Y.S. 391 (A.D. 2 1913) ... 12

Cited Authorities

Page

Stotler & Co. v. Able, 870 F.2d 1158 (7th Cir. 1989) 10

Thomas v. Brock, 810 F.2d 448 (4th Cir. 1987) ....

Trustees of the Chicago Truck Drivers Union (Independent) Pension Fund v. Central Transport, Inc., 935 F.2d 114 (7th Cir. 1991) 6-7, 14, 15

Trustees of the Chicago Truck Drivers Union (Independent) Pension Fund v. Rentar Indus., Inc., 951 F.2d 152 (7th Cir. 1991) 14, 19

In re Watts, 190 U.S. 1 (1903) .....*passim*

In re Willis, 5 So.2d 716 (Ala. 1941) 12

Statutes:

28 U.S.C. § 636 2

28 U.S.C. § 1254 1

28 U.S.C. § 1331 2

29 U.S.C. §§ 1001-1461 2

Cited Authorities

Page

Rules:

FED. R. CIV. P. 59(e) 2, 7, 13, 15

FED. R. CIV. P. 60 2

FED. R. CIV. P. 65(d) 15, 16

MO. SUP. CT. R. 4, PREAMBLE: A LAWYER'S RESPONSIBILITIES 18

MO. SUP. CT. R. 4-2.1 18

Other Authorities:

OLIVER WENDELL HOLMES, JR., THE COMMON LAW (1881), *reprinted in* RICHARD A. POSNER, THE ESSENTIAL HOLMES (1992) 22

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Eighth Circuit, Filed May 4, 2005 ..... 1a

Appendix B — Memorandum And Order Of The United States District Court For The Eastern District Of Missouri, Eastern Division, Dated And Filed September 12, 2002 ..... 16a

Appendix C — Order Of The United States Court Of Appeals For The Eighth Circuit Denying Petition For Rehearing, Dated July 25, 2005 .... 33a

Appendix D — Judgment Of The United States District Court For The Eastern District Of Missouri, Eastern Division, Dated And Filed December 4, 1996 ..... 34a

Petitioner Dysart, Taylor, Lay, Cotter & McMonigle, P.C., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit which conflicts with the Court's decisions in *In re Watts*, 190 U.S. 1 (1903), and *Maness v. Meyers*, 419 U.S. 449 (1975), and chills the legal profession's duty of zealous representation, undermines the attorney-client relationship, and threatens the individual rights and security of lawyers and their clients.

OPINIONS BELOW

The district court's memorandum and order (per Noce, M.J.) finding Petitioner in contempt of court and awarding sanctions is published at 230 F. Supp. 2d 963. Pet. App. 16a. The opinion of the United States Court of Appeals for the Eighth Circuit (per Bowman, J., joined by Arnold, J.) is published at 406 F.3d 955. Pet. App. 1a. The Honorable Michael J. Melloy filed a dissenting opinion. Pet. App. 9a. The Eighth Circuit's order denying rehearing and rehearing *en banc* is not otherwise published. Pet. App 33a.

STATEMENT OF JURISDICTION

The Eighth Circuit entered its opinion on May 4, 2005, and denied rehearing and rehearing *en banc* on July 25, 2005. Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner Dysart, Taylor, Lay, Cotter & McMonigle, P.C., is a law firm that represented several corporations controlled by Steven Gula (Corporate Defendants) in an underlying

action filed by the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund and its trustees (collectively, the Fund) to require interim pension fund payments under ERISA, pending arbitration.[1] Pet. App. 2a-3a, 17a-18a. On December 4, 1996, the district court granted the Fund summary judgment and issued a judgment requiring the Corporate Defendants to, "within 60 days . . . pay to [the Fund] the interim payments demanded by the [Fund] in the amended demand." Pet. App. 3a, 35a-36a. The district court did not label the judgment an injunction and did not treat it as one. Pet. App. 12a, 34a-36a.

The Fund timely filed a motion to amend the December 1996 judgment under FED. R. CIV. P. 59(e) to specify the exact amount and timing of the interim payments and to seek past due amounts, attorneys' fees, and interest from the Corporate Defendants. Pet. App. 5a, 9a-10a. On the Corporate Defendants' behalf, Petitioner timely filed a motion for reconsideration of the district court's judgment under FED. R. CIV. P. 60. *Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing*, 974 F. Supp. 751, 753 (E.D. Mo. 1997).

On February 26, 1997, Howard Lay of Petitioner spoke with Steven Gula and advised him concerning the December 1996 judgment, the Corporate Defendants' motion for reconsideration, and the advisability of filing an appeal.

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1. The district court, in the first instance, possessed subject-matter jurisdiction under 28 U.S.C. § 1331 because the Fund's claims arose under a Federal statute, the Employee Retirement Income Security Act of 1974 (as amended by the Multiemployer Pension Plan Amendments Act of 1980), 29 U.S.C. §§ 1001-1461. In addition, the district court had jurisdiction, in the first instance, to enter the contempt sanction under 28 U.S.C. § 636(e)(4).